

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6536 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL HARSHADBHAI RANCHHODBHAI

Versus

THE COLLECTOR OF BARODA & ORS.

Appearance:

MS KALPANA BRAHMBHATT for Petitioner

MR HL JANI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. Challenge is made by the petitioner to the orders made by the respondents, annexures 'B' and 'D', in this Special Civil Application.

2. The petitioner was having licence to sell foodgrain, sugar and edible oils, which has been granted to him under the provisions of the Gujarat Essential

Articles (Licensing, Control and Stock Declaration) Order 1981. The petitioner was served with a notice u/s.6(B) of the Essential Commodities Act, 1965 (hereinafter referred to as Act) to show cause and explain as to why confiscation proceedings u/s.6A of the aforesaid Act should not be started on the ground of certain irregularities having been committed by him, as per the report made by the Food and Supply Inspector on 31st August, 1984. In pursuance to the said show cause notice, inquiry has been held and thereafter under the order dated 3.12.84, licence granted to the petitioner has been cancelled by the respondent No.1. Against this order of respondent No.1, the petitioner filed an appeal before respondent No.2 which has been dismissed under the order dated October 1985. These two orders have been impugned in this Special Civil Application by the petitioner.

3. The only contention made by the learned counsel for the petitioner, Ms. Kalpana Brahmabhatt, is that the licence of the petitioner has been cancelled by the respondent No.1 without giving any notice or opportunity of hearing to the petitioner and as such, this order is bad in law. This point has been raised by the petitioner before the appellate authority in the memo of appeal and the same has also been pressed during the course of arguments in appeal but the appellate authority has not considered this aspect.

4. On the other hand, the learned counsel for the respondent, Mr. H.L. Jani, contended that the petitioner has made suppression of fact. Notice has been given to the petitioner before cancellation of his licence, but deliberately false statement has been made by the petitioner in this Special Civil Application. However, Mr. H.L. Jani, does not dispute that this point as argued has been raised by the petitioner in the memo of appeal before the appellate authority and has also pressed the same during the course of arguments in the appeal.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties. After going through the contents of this Special Civil Application, reply to the Special Civil Application and rejoinder filed by the petitioner, it is difficult to say at this stage that it is a case of concealment of facts by the petitioner. It is seriously disputed question of fact whether notice for cancellation of licence has been given to the petitioner or not. These are matters to be decided either by the first authority or the appellate

authority and not by this Court. When the point which goes to the root of the matter is raised before the first appellate authority, the same should have been considered and appropriate orders should have been made. Whether this contention of the petitioner is accepted or not is not the issue here, but before the appellate authority if such a question of fact has been raised regarding non service of notice, then before making any order, same should have been considered. Non consideration of a point which has strong relevance to the challenge made to the order of the original authority, vitiates the order of the appellate authority. Nothing more is to be said on merits as I consider it to be a fit case to remand the matter back to the first appellate authority, i.e. the respondent No.2 herein, to decide the appeal afresh after considering the point which has been raised by the petitioner regarding passing of the order of cancellation of his licence without notice. Further it is open for respondents to raise all objections before the appellate authority including the that the order made by the original authority after giving notice to the petitioner.

6. In the result, this Special Civil Application succeeds in part and the order of the respondent No.2, annexure 'D' dated October 1985, is quashed and set aside and the matter is remanded back to the said authority to decide the matter afresh after considering the points raised by the petitioner in the memo of appeal and hearing the parties. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)